MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE
Council Chamber - Town Hall
22 April 2015 (10.30 am - 12.15 pm)

Present:

COUNCILLORS

Conservative Group	Philippa Crowder
Residents' Group	Jody Ganly
East Havering Residents' Group	Linda Van den Hende (Chairman)

Present at the hearing were the applicant Mrs Berta Sarikaya and Mr Patrick Burke a Licensing Agent.

Responsible Authorities present were Mr Keith Bush and Sasha Taylor (Havering Trading Standards), PC Lee Davies (Havering Police Licensing Officer and Alice Peatling on behalf of Children and Young People's Services.

Also present were Havering Licensing Officers Mr Paul Campbell & Mr Arthur Hunt, the Legal Advisor to the Sub-Committee and the clerk to the Licensing sub-committee.

The Chairman advised Members and the public of action to be taken in the event of emergency evacuation of the Town Hall becoming necessary.

No interest was declared at this meeting.

3 **REVIEW OF A PREMISES LICENCE FOR KOTAN SUPERMARKET, 9 BROADWAY PARADE, HORNCHURCH, RM12 4RS**

PREMISES
Kotan Supermarket
9 Broadway Parade, Hornchurch,
RM12 4RS

DETAILS OF APPLICATION

Application for a review of the premises licence by the London Borough of Havering's Licensing Authority under section 51 of the Licensing Act 2003 ("the Act").

APPLICANT
Paul Campbell,
Licensing Officer,
London Borough of Havering,
Mercury House,
Mercury Gardens,
Romford,
RM1 3SL

Application to review

The Trading Standards Services submitted the application to review Kotan Supermarket premises licence, numbered 1347, in accordance with the provisions of s.51 of the Act.

In line with S.51 (3) (a) of the act the licence holder and other Responsible Authorities were informed of the application on the 24 February 2015.

Mr Keith Bush submitted the review application on behalf of the Trading Standards Service. Mr Bush's application is based upon the prevention of crime and disorder, and the protection of children from harm licensing objectives.

Requirements upon the Licensing Authority

The provisions of S.51 (3) (b) of the Act dictate that the Licensing Authority undertakes certain functions with regard to an application made under this section. The Licensing Authority installed an appropriately worded public notice (copy attached) advertising this application at the premises, at Havering Town Hall and on Havering's website inviting interested persons and responsible authorities to make representations against, or in support of, the application in accordance with appropriate premises licence regulations 38 and 39.

When determining an application for a premises licence review made under s.51 of the Act requires that the relevant Licensing Authority holds a hearing to consider the application and any relevant representations made. During the hearing the Licensing Authority must take any of the following steps it considers necessary to promote the licensing objectives. These steps are:

(a) to modify the conditions of the premises licence
(b) to exclude a licensable activity from the scope of the licence
(c) to remove the designated premises supervisor from the licence
(d) to suspend the licence for a period not exceeding three months
(e) to revoke the licence

Representations

There were no representations from Interested Parties.

There were four representations from Responsible Authorities.

Margaret Doe, Interim Service Manager, Safeguarding and Service Standards Unit submitted a representation in support of the application based upon the protection of children from harm licensing objective.

PC Lee Davies submitted a representation supporting the application on behalf of the Metropolitan Police, based upon the prevention of crime and disorder and protection of children from harm licensing objectives.

Mr Paul Campbell, Havering's Licensing Authority, also supported the application with a representation based upon the the prevention of crime and disorder and protection of children from harm licensing objectives.

1. Details of existing licensable activities

Opening Hours		
Day	**Start**	**Finish**
Monday to Saturday	08.00	23.00
Sunday	10.00	22.30

2. Grounds for Review

The application for a review of the Premises Licence had been served under section 51 of the Licensing Act 2003 under all four grounds:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm.

The application for review stated that the there had been two incidents of underage sales at the premise in June 2011 and December 2014. That counterfeit alcohol was seized at the premises in March 2011, illegal cigarettes, tobacco and blunts were seized in December 2014 and illegal alcohol and cigarettes were seized in January 2015.

3. Requirements upon the Licensing Authority

The application was received on 24 February, 2015 and the application was advertised on the council's website and on the notice board in front of the Town Hall. Notice was also posted at the premises. The public notice invited interested persons and responsible authorities to make representations against, or in support of, the application.

When determining an application for a premises licence review made after an application under section 51 the relevant Licensing Authority was required to hold a hearing to consider the review application.

During the hearing the Licensing Authority must take any of the following steps it considers necessary to promote the licensing objectives. These steps are:

a. To modify the conditions of the premises licence;
b. To exclude a licensable activity from the scope of the licence;
c. To remove the designated premises supervisor from the licence;
d. To suspend the licence for a period not exceeding three months; or
e. To revoke the licence.

Where the Licensing Authority takes a step as defined by (a) or (b) above it may provide that the modification or exclusion is to have effect for a specified period not exceeding three months.

The premise was a ground floor unit in a terrace of other commercial units in Elm Park Avenue, Hornchurch. It was situated on the south footway approximately 30 metres from the junction with The Broadway, Elm Park. There are apparent residential units above the commercial units.

4. Promotion of the Licensing Objectives

The review had been requested in order to promote the licensing objectives as shown below:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm.

5. Details of Representations

The following Responsible Authorities did not submit a representation:

London Fire & Emergency Planning Authority ("LFEPA")

Health & Safety Enforcing Authority

Planning Control & Enforcement

Magistrates Court

Valid representations were received from Trading Standards, Metropolitan Police, Children and Young People's Services and Havering's Licensing Authority.

Trading Standards

Keith Bush, Specialist Trading Standards Officer addressed the Sub Committee stating that the Trading Standards service was concerned about the management of the venue in light of the number of failures in recent years.

The operator had failed to promote the following two objectives of the Licensing Act:

The prevention of crime and disorder and
The protection of children from harm

The sub-committee was informed that the premises had made two underage sales, one in June 2011, which was made by the DPS, Mr Caner Cocelli and the other in December 2014 was made by the premise licence holder's father, Mr Sarikaya.

In addition, the premise was visited in March 2011 and 10 bottles of counterfeit alcohol in March 2011 and illicit cigarettes were seized. It was also stated that on 11 December 2014, tobacco and blunts were seized from the premises. During this visit 3640 cigarettes were seized together with a quantity of rolling tobacco and blunts. Further illicit alcohol and cigarettes were seized during a joint visit with HMRC on 6 January 2015.

The premises had been subject to a number of sanctions in the past, a formal warning letter regarding the counterfeit Jacobs Creek in 2011 and a prosecution of the designated premises supervisor for the sale of alcohol at the shop in June 2012. (This related to the sale in June 2011). In addition to this the premises was visited by trading standard staff and signed up to the services Challenge 21 scheme in June 2011.

These interventions have failed to prevent the most recent offences occurring and the operator appears unwilling or unable to make the necessary changes at the venue.

The foreign labelled cigarettes would have been very obvious to anyone standing behind the counter and it should be noted that when Berta Sarikaya was spoken to on the day she commented that 'the cigarettes did not belong to the shop and that a customer had left them there. This response would indicate that Ms Sarikaya had knowledge that the cigarettes were there.

In Patrick Hawthorne's (HMRC) s9 he commented that 'From the foreign writings on all the packets, the lack of UK fiscal markings and UK Health warnings this all indicated that they should not be for sale in the United Kingdom.'

Section144 of the licensing act made it an offence to knowingly keep or allow to be kept on any relevant premises any goods which had been imported without payment of duty or which had otherwise been unlawfully imported.

The sale of illicit cigarettes was not only harmful to the UK economy but these items also do not conform to the labelling requirements under the Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002. These regulations required cigarettes to be labelled with certain warnings in English together with relevant pictorial warnings. Failure to comply with these regulations was a criminal offence.

The premises was revisited shortly afterwards in January 2015. This was a joint visit of Trading Standards officers and HMRC officers. During this visit a further 200 foreign labelled cigarettes were found on Mr Cocelli personally and 121 bottles of alcohol with counterfeit labelling were found and seized.

The service was of the view that the quantity and seriousness of the failings at the venue were sufficient for the revocation of licence. The sub-committee was informed that the offence was not one of error of judgement made by a single member of staff but there were multiple failings over a period of time.

The sale of counterfeit and illicit products was in their own right serious matters. The exact origin and content of counterfeit and illicit products was not known and endangers the welfare of residents of the borough. The fact that age restricted goods had also been sold to young persons was also a very serious issue.

It should be noted that the current DPS, Mr Caner Cocelli and the current premises licence holder, Mrs Berta Sarikaya recently attended the authority's Fair Trading Award Do you Pass Training and both passed. The training took place on 11 March 2015. However this alone did not give the service the confidence that the necessary changes would be made at the venue.

If the sub-committee were minded not to revoke the current licence, Trading Standard service would request that robust conditions around the sale of alcohol to minors, staff training and conditions to control the purchasing of stock to ensure that they were only sourced from reputable traders be place on the licence.

Trading Standard requested that the sub-committee if minded to consider banning Mr Cocelli from the premises as they do not believe removing him as DPS alone was sufficient. The service needed to be confident that he would have no further involvement in the running of the premises.

Licensing Authority

Paul Campbell, Licensing Officer addressed the sub-committee outlining the Licensing Authority representation to support the Trading Standards application to review the premises licence based upon the concerns that related to the prevention of crime and disorder and the protection of children from harm licensing objectives.

The Licensing Officer informed the sub-committee that on Saturday 20 December 2014, he attended the premises at 9 Broadway Parade, Elm Park, Hornchurch RM12 4RS the name at the premises was “Elm Park Express” but the premises licence issued under the Licensing Act 2003 was in the name of “Kotan” (licence number 1347).

During the visit it was found that the original premises licence or a certified copy of the licence was not on the premises and therefore not available for inspection, a photo copy of part “B” was on display (not a certified copy).

Alcohol was being displayed for sale for the complete length of the wall behind the counter (shop plan attached) in the fridges directly opposite the counter, no other goods were in this fridge, trays of canned beers were stacked in front of the display and fridge at the end of the shop, also wine was displayed for sale in three round wire baskets which were situated on the floor of the shop at the end of the counter.

As the licence was not available at the premises Mr Campbell was unable to check the conditions and the layout of the shop.

Following a check of his findings on Monday 22 December 2014 against the records held by the licensing authority at about 09.30 hours Mr Campbell telephoned Mr Coccelli the Designated Premises Supervisor for the premises and told him of his findings and that alcohol other than that displayed along the wall behind the counter has to be removed to comply with the plan on the premises licence, Mr Coccelli agreed to effect this arrangement. The sub-committee was informed that Mr Coccelli was informed that a formal warning regarding the offences would be issued, (a copy of the warning and photos of alcohol display were attached to the agenda papers).

On Tuesday 23 December 2014, at 16.15 hours, Licensing Officer Campbell attended the premises to deliver a copy of the formal warning letter, the staff told him that they were aware that the alcohol had to be removed but stated they had been busy and not had time to remove it.
The fridge opposite the counter was still full of alcohol, the cases of can beers were not there, the baskets of wine were still in the aisle, Mr Campbell took pictures of the fridge and wine baskets. (Photographs were attached to the agenda papers)

The Licensing Officer requested to know why the alcohol had not been removed and was told by a male staff member that he was the only person

there and had not had time to effect the removal of the drinks. The staff member tried to pull down the built in roller curtain over the fridge alcohol but it was broken and would not stay down in place.

The sub-committee was informed that during the same inspection of the premises, Licensing Officer Campbell noticed water was leaking through from the ceiling and dripping onto the food counter, this was pointed out to the staff member who then called out and a female came out from the rear room and removed the food goods under the leak and then left supposedly to investigate the leak. Mr Campbell therefore submitted that the first statement made by the member of staff that he was the only person present and therefore he could not have implemented the instruction to move the alcohol was not true.

In summary, the sub-committee was asked to note that the premises had:

- By the second visit, the alcohol had been removed to the permitted areas
- Prior to the visit to this premises, they had failed a test purchase and had illicit cigarettes seized
- At the time of the first visit, the premises were breaking the condition of the premises licence by displaying alcohol for sale in areas which were not permitted
- The premises was not keeping to the basic licensing conditions of having the licence or certified copy at the premises and the correct part of the licence or certified copy displayed
- After speaking with the DPS and pointing out the offences they had over 30 hours to comply with their licence by removing the alcohol and they failed to do so
- After the visit in January 2015, the premises had illicit alcohol and cigarettes seized on the premises

History of the premises
10/02/2011 – licence transferred to Mr Caner Coccelli (from Mr Ali Aydin)
10/03/2011 – Counterfeit alcohol seized
27/04 2011 – DPS changed to Mr Caner Coccelli (from Mr Ali Aydin)
04/06/2011 – Underage test purchase failure
14/06/2012 – Licence transferred to Mrs Berta Sarikaya (from Mr Caner Coccelli)
11/12/2014 – Underage test purchase failure
11/12/2014 – Illicit, cigarettes, tobacco and blunts seized
20/12/2014 – Licensing inspection
22/12/2014 – Offences pointed out to DPS and Licence holder
23/12/2014 – Offences still being committed
06/01/2015 – Illicit, alcohol and cigarettes seized

The sub-committee heard that this was not a premises that had made a one off mistake or had small problems at the premises. The problems at this premises started from 2011 to this year.

They had not put in place procedures to prevent alcohol being sold to under age persons and they seem to have no regard to the licensing laws even the ones that were easy to comply with such as the availability of the premises licence.

They had not complied with the laws relating to counterfeit and illicit goods. When offences were pointed out to the DPS and licence holder little was done immediately to rectify the problem and appropriate action was only taken when forced to do so by a further licensing visit.

The sub-committee was informed that the licensing authority had no confidence in the licence holder or the DPS in being able to run a legal and problem free premises and recommends that the premises licence be revoked.

The sub-committee was informed that if they were minded not to revoke the premises licence, that they consider adding stringent conditions regarding the training of staff, age verification, purchasing of alcohol from registered wholesalers only to the premises licence and the removal of Mr Coccelli as the DPS.

Metropolitan Police

PC Lee Davies made representation on behalf of the Metropolitan Police. PC Davies's representation repeated most of what was included in the representation submitted by Trading Standards

P.C. Lee Davis, Metropolitan Police Licensing Officer for Havering supported the application for a review of the premises licence, on the basis the following two of the four licensing objectives:

1. The prevention of crime and disorder
2. The protection of children from harm

The sub-committee was informed that the following reports had been found when researching police indices in relation to incidents at the location.

KDRT00304912 - Underage Alcohol Sale Thursday 11th December 2014
Police and Trading standards conducted a test purchase operation at the premises with the aim of testing the availability of alcohol. The volunteer on this occasion was 16 years of age. Having entered the premises the volunteer managed to purchase several cans of Carling Lager with an alcohol content of 4% per can, the sale was witnessed by officers from trading standards that were in the venue at the time of the sale.

Police joined Trading Standards at the venue and the allegation was put to the shop worker Mr Mehmet Ali Sarikaya and he was issued with a £90 fixed penalty notice. Mr Sarikaya did not challenge the volunteer nor did he ask for identification to confirm the age, Police would also like to point out that Mr Sarikaya currently holds a personal licence issued by the London

Borough of Enfield. At the time of the sale the DPS (Dedicated premises supervisor) was not present, furthermore, there was a large quantity of foreign cigarettes under the counter (Estimated to be 2000 +) that had not been VAT cleared,

KDRT00257062 - Underage Alcohol Sale Saturday 4th June 2011
Police and Trading Standards officers visited the premises to conduct a test purchase operation, the dedicated premises supervisor at the time sold a 75cl bottle of Echo Falls wine at 11% volume to a 16 year old test purchaser, no identification was requested and the DPS did not ask for the volunteer's age.
The DPS was prosecuted by Trading Standards and pleaded guilty at court, He was fined £233 and was told to pay £300 towards the costs.

KDRT00229759 Test Purchase operation Saturday 20th December 2008
Police and Trading Standards officers attended the premises to test the availability of alcohol using a test purchase operative, who was 16 years old at the time. On this occasion the shop did not sell, but Police and Trading Standards officers noted that the persons working behind the counter was not supervised and in their opinion was no more than about 14 years old.

KDRT00225631 Licensing concerns - 3 June 2008
At 1220 hours, Police visited Kotan Supermarket and spoke with the DPS regarding incidents that occurred on Friday night into Saturday morning 30/05/2008-31/05/2008 over the road at The Elm Park Hotel Public House. Police advised that they were unhappy with the attitude of the member of staff and his inability to be able to operate the CCTV system in the shop. The situation meant that he was unable to dispel Police and Trading Standards officers concerns that persons under eighteen years of age were obtaining alcohol from his premises whether by direct sale or as a result of persons buying it on their behalf.

Police had advised that both the DPS and his staff needed to urgently address their attitude when dealing with young persons particularly at the weekends. This extended to a warning that it was not acceptable to leave a twelve year old boy behind the serving counter alone at 2200 hours on a Friday night. The DPS was also advised and warned about the following requirements if the venue is to avoid a premises licence review:

1. CCTV maintenance
2. Challenge 21 and strict I D compliance
3. Daily Occurrence and refusals register to be completed
4. Staff training and qualifications to be reviewed

KDRT00180038 - Anti Social Behaviour at the location 12 May 2006
Police responded to a call at the location of reports of anti-social behaviour outside of the venue. On arrival the officers noted that some of the group had alcohol in their possession and were no more that 15-17 years old. The officers spoke to the shop manager and raised concerns that he was selling to underage children. The manager admitted that he had sold alcohol to one

of the group members previously. The alcohol was removed and the attending officer noted that he fears that the venue will continue to sell to under age children.

KDRT00108217 Licensing offences - 3 October 2003
Police attended the venue along with trading standards and officers from customs and excise to conduct a joint operation, whilst at the venue, there were several VAT irregularities in the venue records and some of the alcohol on display was removed for further investigation, it was also noted that a pick axe handle and a knife were located behind the till point.

On being questioned PC Davies was not able to give evidence of any connection between the current licence holder and DPS and the owner/DPS prior to 2011

In Summary
There appears to be a common theme with this venue, although some of the examples the Police have used are old it would suggest that irrespective of who the owner, manager, DPS are they are not capable of following the law or indeed the conditions set out in the premises licence.

Furthermore Police received an email on 12 March 2015 from the current management's representatives stating that the venue had lost the premises licence. If this was the case then how was a failing venue going to comply with the conditions set out in the licence if they do not have a licence to refer to in the first place.

It was the Police's opinion that the premises licence for this venue should be revoked on the grounds that the management do not appear to be able to follow conditions set in the licence and had shown that there were occasions where they sold alcohol to underage children.

The Police offered conditions should the sub-committee feel that revocation was not the way forward.

Children and Family Services

Alice Peatling outlined the representation on behalf of Children and Young People's Services that was based on the protection of children from harm licensing objective.

The sub-committee was informed that the service was in support of the application to review evidences of significant concern for the way in which the premises was managed, operated its business and ensure that children are protected from harm.

The business had failed two underage sales. On both occasion the person selling did not challenge the young person or request identification to confirm age. This was despite a commitment from the licence holder to implement Challenge 21 following the first underage sale.

The premise had been found to sell counterfeit alcohol and cigarettes that had been bought from outside the UK. Although the owner was warned regarding illegal selling, the practice appeared to have continued.

The sub-committee noted that Children's Social Care had no confidence in the manner in which the business was run and was of the view that the business processes do represent a risk to children and young people.

Children Social Care was not confident that the management would comply with any restrictions placed on the establishment to improve standards as the Trading Standards report evidences that concerns were not acted on by management to ensure that all licensing objectives were complied with.

The sub-committee noted Children Social Care fully supported Trading Standards contention that the failure of the business in complying with the licencing objectives was sufficiently serious that revocation of the licence should be considered.

6. Response from new Premises licence Holder and DPS

Mr Patrick Burke, a Licensing Agent was present and responded on behalf of premises owner Mrs Berta Sarikaya.

The sub-committee was informed that the premises owner, Mrs Berta Sarikaya bought the premises in 2012 but retained Mr Coccelli as the DPS as he was highly recommended whilst she continued her job at a dental clinic.

Since the application for review, the premises owner Mrs Sarikaya had quit her job at the clinic in order to manage the premises on a day to day basis. The premises owner had dismissed Mr Coccelli, (copy of dismissal letter dated 15 March 2015 circulated at hearing) and changed the name of the premises to Elm Park Express.

The sub-committee was informed that the premises would accept all the conditions suggested by the Police but raised some concern on how to enforce condition one that stated – "The current DPS should be removed and replaced with a DPS with a proven track record in the off licence trade, the new person must provide evidence to support this".

In response to a question on why the premises kept a bucket of money next to the till, the sub-committee was informed that the money related to the Payzone takings which the premises kept separate.

The sub-committee was informed that another licensing agency NART were instructed in December 2014 to arrange a variation of the premises licence in order to change the name of the premises but this was not progressed until March 2015.

In response to the issue of two different addresses for the premises owner, Mrs Sarikaya clarified that her current address was 26 Warden House.

The sub-committee was informed that Mrs Sarikaya left her job at the dental clinic on 28 December 2014. She responded that she bought the premise in June 2012 but could not recall how much she paid or who was the previous owner.

The sub-committee was informed that there was no connection apart from an employer/employee relationship with Mr Coccelli.

The subcommittee heard that there are two members of staff at the premises and that Mr Sarikaya who was Mrs Berta Sarikaya's father occasionally came to help.

The sub-committee heard that Mrs Berta Sarikaya was now the DPS at the premises.

The sub-committee noted that Mr Coccelli currently lived above the premises. The representative of the applicant stated that Mr Concelli was currently looking for a new accommodation and had no involvement in the business.

In response to a question, the sub-committee noted that the lease of the premises, which included both the shop premises and living accommodation above remained in Mr Coccelli's name.

7. Consideration of Application

Consequent upon the hearing held on 22 April 2015 the Sub-Committee's decision regarding the review of the premises licence for Kotan Supermarket, 9 Broadway Parade, Hornchurch, RM12 4RS is set out below, for the reasons shown:

The Sub-Committee was obliged to determine this application with a view to promoting the licensing objectives, which are:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

In making its decision, the Sub-Committee also had regard to the Guidance issued under Section 182 of the Licensing Act 2003 and Havering's Licensing Policy.

In addition the Sub-Committee took account of its obligations under s17 of the Crime and Disorder Act 1998, and Articles 1 of the First Protocol of the Human Rights Act 1998.

The Sub-Committee during deliberation agreed to discount all events on or before 2010 as there was no evidence of any connection between the current owner and the owner/DPS prior to that date.

- **Prevention of crime and disorder**
- **Protection of children from harm**

The Sub-Committee accepted the facts as presented by all the responsible authorities present which were unchallenged by the premises owner Mrs Berta Sarikaya and her representative.

The Sub-Committee were not satisfied from responses that Mr Coccelli was no longer involved in the business.

The Sub-Committee agreed that they were not satisfied that the premise would run properly and legally.

Decision:

Having listened carefully to all the evidence from all parties, the sub-committee had taken the following in to consideration when reaching our decision. Accepted all the evidence from the Responsible Authorities, which was not challenged, however the sub-committee had discounted evidence which predates 2010.

The sub-committee had concerns that the continued involvement of Mr Coccelli remained significant as he continued to be the leaseholder and lived above the premises.

It appeared Mr Coccelli was only perported to had been dismissed from being employed at the premises once the notice of review was issued. The sub-committee referred to the letter from the premises owner Mrs Sarikaya to Mr Coccelli dated 15 March 2015.

Mrs Berta Sarikaya stated that she bought the premises in June 2012, therefore the premises licence transferred to her on that date. It appeared that this transfer took place following Mr Coccelli's conviction on 1 June 2012 at Romford Magistrate court for under age sales.

The sub-committee had not received sufficient evidence to conclude that the premises owner Mrs Sarikaya would manage the business in line with the following licensing objectives, namely the prevention of crime and disorder and the protection of children from harm.

The sub-committee considered the imposition of conditions listed by the Police, all of which were accepted by Mrs Sarikaya, to determine whether this would ensure compliance with the licensing objectives, however the sub-committee discounted this because it did not have confidence in the premises owner Mrs Sarikaya's ability to manage the premises.
The sub-committee therefore resolved to revoke the licence.

Chairman